

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID NATHANIEL ROBERTS,

Plaintiff,

v.

WARDEN LYNCH,

Defendant.

No. 2:20-cv-1349 DB P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims defendants violated his rights by improperly taking funds from his prison trust account and withholding his legal mail. Presently before the court is plaintiff's motion to proceed in forma pauperis (ECF No. 2) and his complaint for screening (ECF No. 1). For the reasons set forth below, the court will grant the motion to proceed in forma pauperis and dismiss the complaint with leave to amend.

IN FORMA PAUPERIS

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). (ECF No. 2.) Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct

the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

SCREENING

I. Legal Standards

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1) & (2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227. Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell AtlanticCorp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).

However, in order to survive dismissal for failure to state a claim a complaint must contain more than "a formulaic recitation of the elements of a cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic,

550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

The Civil Rights Act under which this action was filed provides as follows:

Every person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. Here, the defendants must act under color of federal law. Bivens, 403 U.S. at 389. The statute requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

Moreover, supervisory personnel are generally not liable under § 1983 for the actions of their employees under a theory of respondeat superior and, therefore, when a named defendant holds a supervisory position, the causal link between him and the claimed constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement of official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

II. Allegations in the Complaint

Plaintiff alleges the events giving rise to the claim occurred while he was incarcerated at California State Prison, Sacramento (CSP-SAC). (ECF No. 1 at 1.) He has identified the following defendants: (1) CSP-SAC trust office staff; (2) CSP-SAC legal mailroom staff; and (3) Warden Lynch. (Id. at 2.)

1 Plaintiff claims the trust office staff, mailroom staff, and “other staff” have been stealing
 2 extra money from his prison trust account and withholding his legal mail. (*Id.* at 3.) He alleges
 3 he misses a lot of court deadlines because he is receiving less than half of the legal mail he should
 4 be getting.

5 **III. Does Plaintiff State a § 1983 Claim?**

6 **A. Access to the Courts**

7 To state a claim for denial of the First Amendment right of access to the courts, a prisoner
 8 must allege that he suffered an “actual injury” as a result of the defendant’s alleged actions, by
 9 explaining how the challenged official acts or omissions hindered plaintiff’s efforts to pursue a
 10 nonfrivolous legal claim. *Lewis v. Casey*, 518 U.S. 343, 351-55 (1996). The right of access to
 11 the courts applies to nonfrivolous direct criminal appeals, habeas corpus proceedings, and civil
 12 rights actions. *Id.* at 353 n.3, 354-55. Plaintiff has alleged the interference with his mail has
 13 caused him to miss court orders and court deadlines. Such allegation could potentially state a
 14 claim.

15 Plaintiff has not provided sufficient facts to show that he has missed a deadline in a
 16 nonfrivolous direct appeal, habeas corpus, or civil rights action. In any amended complaint,
 17 plaintiff should state additional facts identifying the nature of the proceedings and how his efforts
 18 were hindered.

19 **B. Legal Mail**

20 With respect to incoming prisoner mail, prison officials have a responsibility to forward
 21 mail to inmates promptly. *See Bryan v. Werner*, 516 F.2d 233, 238 (3d Cir. 1975). Allegations
 22 that mail delivery was delayed for an inordinate amount of time and allegations of a pattern of
 23 interference with mail are sufficient to state a claim for violation of the First Amendment. *See*
 24 *Antonelli v. Sheahan*, 81 F.3d 1422, 1432 (7th Cir. 1996); *Calihan v. Adams*, No. 1:09-CV-1373
 25 MJS (PC), 2011 WL 284467, at *3 (E.D. Cal. Jan. 26, 2011) (ongoing delays of between 21 and
 26 35 days in receiving incoming mail sufficiently long to substantially burden plaintiff’s First
 27 Amendment rights and chill his exercise of free speech). Any practice or regulation that unduly
 28 delays an inmate’s incoming mail must be reasonably related to legitimate penological interests.

1 See Turner v. Safley, 482 U.S. 78, 89 (1987). But a temporary delay or isolated incident of delay
 2 does not violate a prisoner's First Amendment rights. See Crofton v. Roe, 170 F.3d 957, 961 (9th
 3 Cir. 1999) (policy of diverting publications through property room reasonably related to prison's
 4 interest in inspecting mail for contraband).

5 Here, plaintiff has not provided facts indicating more than a suspicion that he is not
 6 receiving all of his mail. In any amended complaint, plaintiff must identify specific defendants
 7 involved in the interference and explain what actions that defendant took to prevent him from
 8 receiving his mail.

9 **C. Prison Trust Account Funds**

10 Plaintiff is advised that the United States Supreme Court has held that “an unauthorized
 11 intentional deprivation of property by a state employee does not constitute a violation of the
 12 procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful
 13 postdeprivation remedy for that loss is available.” Hudson v. Palmer, 468 U.S. 517, 533 (1984).
 14 “California provides an adequate post deprivation remedy for any property deprivations.” Barnett
 15 v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994). Accordingly, plaintiff likely cannot state a claim
 16 based on his allegation that funds have been taken from his prison trust account.

17 Moreover, the allegations in the complaint do not explain the reason for the removal. The
 18 United States Supreme Court has also held that an authorized deprivation of property pursuant to
 19 prison regulations is valid if it is reasonably related to legitimate penological interests. Turner v.
 20 Safley, 482 U.S. 78, 89 (1987). Thus, there could be a valid reason for the removal of funds, but
 21 without additional facts the court cannot determine whether the removal of funds violated
 22 plaintiff’s rights.

23 **D. Proper Defendants**

24 Plaintiff must identify as a defendant only persons who personally participated in a
 25 substantial way in depriving plaintiff of a federal constitutional right. Johnson v. Duffy, 588 F.2d
 26 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if
 27 he does an act, participates in another’s act or omits to perform an act he is legally required to do
 28 that causes the alleged deprivation). “Vague and conclusory allegations of official participation

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3 in civil rights violations are not sufficient.” Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

4 Under § 1983, liability may not be imposed on supervisory personnel for the actions or
 5 omissions of their subordinates under the theory of respondeat superior. Ashcroft v. Iqbal, 556
 6 U.S. 662, 677 (2009); Simmons v. Navajo Cnty., Ariz., 609 F.3d 1011, 1020-21(9th Cir. 2010);
 7 Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930,
 8 934 (9th Cir. 2004). “A supervisor may be liable only if (1) he or she is personally involved in the
 9 constitutional deprivation, or (2) there is ‘a sufficient causal connection between the supervisor's
 10 wrongful conduct and the constitutional violation.” Crowley v. Bannister, 734 F.3d 967, 977 (9th
 11 Cir. 2013) (citations omitted); Lemire v. California Dep't of Corr. and Rehab., 726 F.3d 1062,
 12 1074-75 (9th Cir. 2013). “Under the latter theory, supervisory liability exists even without overt
 13 personal participation in the offensive act if supervisory officials implemented a policy so
 14 deficient that the policy itself is a repudiation of constitutional rights and is the moving force of a
 15 constitutional violation.” Crowley, 734 F.3d at 977 (citing Hansen v. Black, 885 F.2d 642, 646
 16 (9th Cir. 1989)) (internal quotation marks omitted).

17 Plaintiff’s belief that Warden Lynch is responsible for the alleged violations because of
 18 his position as warden is not sufficient to state a claim against him. Additionally, plaintiff cannot
 19 state a claim against Lynch based only on his position as warden of CSP-SAC.

20 Further, plaintiff’s vague allegations that the mailroom staff and trust office staff violated
 21 his rights is not sufficient. Plaintiff does not need to know the exact identity of each defendant
 22 and may use “Doe” designations to refer to defendants whose names are unknown. See Gillespie
 23 v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980) (The use of John Does in pleading practice is
 24 generally disfavored, but not prohibited); Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir.
 25 1999); Lopes v. Viera, 543 F. Supp.2d 1149, 1152 (E.D. Cal. 2008). However, “John Doe”
 26 defendant liability must also be properly alleged. Plaintiff should number them in the complaint,
 27 e.g., “John Doe 1,” “John Doe 2,” so that each numbered John Doe refers to a specific person. If
 28 plaintiff chooses to file an amended complaint, he shall either name the defendants involved or

list the Doe defendants involved and describe what each did to violate his rights. If plaintiff can only list these defendants as John Doe, plaintiff should allege specific acts that each Doe defendant did, such as “John Doe 1 did X” and John Doe 2 did Y.” Alexander v. Tilton, No. 1:07-cv-0759 LJO DLB, 2009 WL 464486, *5 (E.D. Cal. Feb. 24, 2009).

IV. Amending the Complaint

As set forth above, the complaint fails to state a claim. However, plaintiff will be given the opportunity to file an amended complaint. Plaintiff is advised that in an amended complaint he must clearly identify each defendant and the action that defendant took that violated his constitutional rights. The court is not required to review exhibits to determine what plaintiff’s charging allegations are as to each named defendant. The charging allegations must be set forth in the amended complaint, so defendants have fair notice of the claims plaintiff is presenting. That said, plaintiff need not provide every detailed fact in support of his claims. Rather, plaintiff should provide a short, plain statement of each claim. See Fed. R. Civ. P. 8(a).

Any amended complaint must show the federal court has jurisdiction, the action is brought in the right place, and plaintiff is entitled to relief if plaintiff’s allegations are true. It must contain a request for particular relief. Plaintiff must identify as a defendant only persons who personally participated in a substantial way in depriving plaintiff of a federal constitutional right. Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, participates in another’s act or omits to perform an act he is legally required to do that causes the alleged deprivation).

In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed. R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed. R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d 1119, 1125 (9th Cir. 2002) (noting that “nearly all of the circuits have now disapproved any heightened pleading standard in cases other than those governed by Rule 9(b)”; Fed. R. Civ. P. 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff’s claims must be

1 set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema
2 N.A., 534 U.S. 506, 514 (2002) (“Rule 8(a) is the starting point of a simplified pleading system,
3 which was adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8.

4 An amended complaint must be complete in itself without reference to any prior pleading.
5 E.D. Cal. R. 220. Once plaintiff files an amended complaint, all prior pleadings are superseded.
6 Any amended complaint should contain all of the allegations related to his claim in this action. If
7 plaintiff wishes to pursue his claims against the defendant, they must be set forth in the amended
8 complaint.

9 By signing an amended complaint, plaintiff certifies he has made reasonable inquiry and
10 has evidentiary support for his allegations, and for violation of this rule the court may impose
11 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

12 CONCLUSION

- 13 1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is granted.
- 14 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
15 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §
16 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order
17 to the Director of the California Department of Corrections and Rehabilitation filed
18 concurrently herewith.
- 19 3. Plaintiff’s complaint (ECF No. 1) is dismissed with leave to amend.
- 20 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
21 complaint that complies with the requirements of the Civil Rights Act, the Federal
22 Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint
23 must bear the docket number assigned to this case and must be labeled “First
24 Amended Complaint.”

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3 5. Failure to comply with this order will result in a recommendation that this action be
4 dismissed.

5 Dated: January 15, 2021

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8 DEBORAH BARNES
9 UNITED STATES MAGISTRATE JUDGE
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17 DB:12

18 DB:1/ORDERS/PRISONER/CIVIL.RIGHTS/robe1349.scrn
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